IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 143 of 2006
In
COMPANY APPLICATION No. 337 of 2006
With
COMPANY PETITION No. 144 of 2006
In
COMPANY APPLICATION No. 338 of 2006
With
COMPANY PETITION No. 145 of 2006
In
COMPANY APPLICATION No. 339 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ARVIND BRANS LTD. - Petitioner(s)
Versus
.. - Respondent(s)

==========

Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
None for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/11/2006

COMMON ORAL JUDGMENT

1. All these petitions are filed by three petitioner companies for sanction of a composite scheme of arrangement in the nature of demerger and transfer of Garments Business Division of Arvind Brands Limited and amalgamation of Arvind Fashions Limited to the Arvind Mills Limited and reduction and restructuring of share capital of the Arvind Mills Limited under Section 391 r.w. Sections 78, 100 to 103 of the Companies Act; 1956.

Arvind Brands Limited (demerged company) is the petitioner in Company Petition No.143 of 2006 and as per the composite scheme of arrangement, Garments Business Division of the same will be transferred to Arvind Mills Limited (transferee company). Arvind Fashions Limited (transferor company) is the petitioner in Company Petition No.144 of 2006 and as per the composite scheme of arrangement, the entire company is to be

amalgamated with the Arvind Mills Limited.

2. It has been averred in the respective petitions that all the petitioner companies belong to the same group of management viz. the Arvind Group. Arvind Brands Limited, the demerged company, is a wholly owned subsidiary of the Arvind Mills Limited. Arvind Fashions Limited, the transferor company, is the wholly owned subsidiary of Arvind Brands Limited. It is averred that Arvind Brands Limited is engaged in manufacturing and marketing of apparel products under various brands. Arvind Fashions Limited is one of the leading garment manufacturers in India. Its principal business consists of manufacturing of apparel products and also marketing of branded garments in India and certain other countries. Arvind Mills Limited is a flagship company of Arvind Group having business spanning across entire value chain of textiles. The details about the commercial activities and the financial status of all the companies are narrated in the respective Company Petitions. It

is averred that the scheme is proposed for a rapid growth of branded apparel business to achieve synergies in production marketing and costs and to integrate business operations and introduce considerable synergies in the business of the group companies. The details of the advantages that would flow by virtue of the proposed arrangement between the aforesaid companies are given in the respective petitions.

3. So far as demerged company i.e. Arvind Brands Limited is concerned, the meeting of the shareholder of the said company for approving the scheme of amalgamation as required to be held under the provisions of Section 391(2) of the Companies Act; 1956 was dispensed with by this Court vide order dated 3.7.2006 passed in Company Application No.337 of 2006. The meetings of the unsecured creditors and secured creditors of the said company were convened to consider the scheme of amalgamation pursuant to the order passed by this Court dated 3.7.2006 passed in Company Application No.337 of 2006 and

accordingly, the Chairmen of the respective meetings have submitted their report along with the Company Petition No.143 of 2006 and it is reported that the unsecured creditors as well as the secured creditors of the company have approved the scheme of arrangement [paragraph – 14(i) and 15(i)]. The report of the Chairman is at page – 122 of the said Company Petition.

4. So far as Company Petition No.144 of 2006 filed by the Arvind Fashions Limited (transferor company) is concerned, the meeting of the shareholders of the said company to consider/approve the scheme of amalgamation as required to be held under the provisions of Section 391(2) of the Companies Act; 1956 was dispensed with by this Court vide order dated 3.7.2006 passed in Company Application No.338 of 2006. The meetings of the unsecured creditors as well as secured creditors of the transferor company were convened pursuant to the order passed by this Court dated 3.7.2006 passed in Company Application No.338 of 2006 and the

result of the said meeting has been submitted in the petition and the Chairman's report is also produced. It has been submitted that the unsecured creditors as well as the secured creditors of the transferor company have approved the scheme of amalgamation [paragraph – 14(i) and 15(i)].

5. So far as Company Petition No.145 of 2006 filed by the transferee company i.e. Arvind Mills Limited is concerned, the meetings of the equity shareholders as well as preferential shareholders were convened pursuant to the order passed by this Court dated 3.7.2006 passed in Company Application No.339 of 2006 and the Chairman's report is produced and it has been submitted in the petition that out of the equity shareholders present at the meeting, they have voted in favour of the proposed amended scheme of amalgamation and the resolution approving the proposed amended scheme of amalgamation is approved unanimously. Thus, the scheme of amalgamation has been approved by the equity

shareholder [paragraph – 14(i)]. It is also further submitted that the meeting of the preferential shareholders of the company was also called pursuant to the order passed by this Court and all the preferential shareholders have approved the scheme [paragraph – 15(i)]. It is also further submitted that the capital structure of the transferee company is not likely to undergo any change except to the extent of reduction and restructuring in the form of utilization of sale premium account of the petitioner company pursuant to Clause – 22 of the scheme and that the same is proposed pursuant to Section 78 r.w. Section 101 of the Companies Act. It is also further submitted that it is proposed as a integral part of the scheme and the proposed composite scheme has been approved by the requisite statutory majority of the equity and preferential shareholders at the meetings duly convened on 8th August, 2006. It is also further submitted that this Court in its order dated 3rd July, 2006 has also clarified that it is not necessary to pass a separate

resolution under Section 100 for the proposed reduction and since the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholders of any paid up capital, the procedure prescribed under Section 101(2) was not applied and accordingly, the procedure prescribed under Rules 48 to 65 and Rule 85 of the Company Court's Rules is dispensed with.

6. After the petitions were admitted, the same were duly advertised in the newspapers (Indian Express and Loksatta-Jansatta, Ahmedabad edition dtd 4.9.2006 and in Vijay Times and Vijay Karnataka, Bangalore editions dtd 4.9.2006 for Arvind Brands Limited and Arvind Fashions Limited) and the publication in the Government Gazette was dispensed with as directed in the order dated 21.8.2006. No one has come forward with any objections to the said petitions even after the publication.

7. Notice of the petition of Arvind Fashions Limited, the transferor company, was served upon the Official Liquidator attached to this Court and vide report dated 22nd September, 2006, filed by the Official Liquidator, it is observed that the affairs of the transferor company has not been conducted in a manner prejudicial to the interest of their members or to the public interest.

8. Notices of all the petitions were served upon the Central Government and Shri P.J.Malkan, Additional Central Government Standing Counsel appears for the Central Government. He has placed on record affidavit dated 25th September, 2006 filed by the Assistant Registrar of the Companies along with the xerox copy of the letter from the Regional Director dated 21st September, 2006 and subsequently, communication dated 27th October, 2006 with original signatures of the Regional Director is also placed on record. By the aforesaid two communications, the Regional Director has submitted that the

Director has examined the Company Petition Nos.143 of 2006 to 145 of 2006 and it has been decided not to oppose the said petitions save and except that the prosecution cases under FERA, Sales Tax and ESI cases are pending in respect of the transferor company and CST cases are pending in respect of the demerged companies and therefore, the same is required to be considered. Mrs. Swati Soparkar, learned advocate appearing for the petitioner companies has submitted that the petitioner companies have not sought any absolution from the said litigations and the details of all the pending litigations are provided as sought for by the Regional Director. It has been further submitted that the scheme itself provides that all the pending litigations against the respective companies shall continue against the transferee company. She has relied upon the judgment of this Court in case of ***Ratnamani Industries Limited*** passed in Company Petition No.17 of 1996 and other cognate Company Petitions and the judgment in case of ***Gujarat Ambuja*** reported in

1999 (2) Company Law Journal P.504. She has also relied upon the decision in the case of ***Arvind Mills Limited*** reported in ***111 Company Cases P.118***, more particularly, ***Para – 152 and 159*** of the said judgment.

9. I have heard Mrs. Swati Soparkar, learned advocate appearing for the respective petitioner companies. Considering the averments in the Company Petitions, the report of the Official Liquidator as well as the letter addressed by the Regional Director and considering the proposed scheme of amalgamation as well as the judgments cited at the bar, referred to hereinabove, and considering the fact that in the scheme itself it has been provided that all the pending litigations against the respective companies shall continue against the transferee company and the petitioner companies have not sought any absolution from the litigations pending, it appears to the Court that the amalgamation would be in the interest of the respective companies and their shareholders and

creditors and no prejudice is likely to be caused to the public interest. Therefore, prayer in terms of paragraph – 24(a) & (b) of Company Petition No.143 of 2006, paragraph 22(a) of Company Petition No.144 of 2006 and paragraph – 21(a) of Company Petition No.145 of 2006 are hereby granted.

10.The petitions are disposed of accordingly.

11.So far as the costs to be paid to the Central Government Standing Counsel is concerned, the same is quantified at Rs.3,500/- per petition and the same will be paid to Shri P.J.Malkan, learned Additional Central Government Standing Counsel by the respective petitioners.

[M.R.SHAH, J.]

kdc